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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/776,781	02/06/2001	Jacques Theze	202930US0CIP	3255

22850 7590 09/05/2003

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ALEXANDRIA, VA 22314

EXAMINER

MERTZ, PREMA MARIA

ART UNIT	PAPER NUMBER
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1646

DATE MAILED: 09/05/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n N .

09/776,781

Applicant(s)

THEZE ET AL.

Examin r

Prema M Mertz

Art Unit

1646

-- The MAILING DATE of this communicati n appears on the cover sheet with the c rrespondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 June 2003 and 10 July 2003 .
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16,18-32 and 38-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16,19-26,28-32 and 38-41 is/are rejected.
- 7) ☒ Claim(s) 18, 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 16 .
- 4) ☒ Interview Summary (PTO-413) Paper No(s). 18 .
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_ .

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### **DETAILED ACTION**

1. Claims 1-15, 17, 33-37 have been canceled previously. Amended claims 16, 18, 19, 20-27 (Paper No. 17, 7/10/03) and claims 28-32, 38-41 are under consideration.

2. Receipt of applicant's arguments and amendments filed in Paper No. 17 (7/10/03) is acknowledged.

3. The following previous rejections and objections are withdrawn in light of applicants amendments filed in Paper No. 17, 7/10/03:

(i) the objection to the specification for the lack of recitation of "Brief Description of the Drawings" on page 6, line 13;

(ii) the rejection of claims 16, 18-26, under 35 U.S.C. 112, first paragraph, written description;

(iii) the rejection of claims 16, 18-26, under 35 U.S.C. 112, first paragraph, scope of enablement; and

(iv) the rejection of claims 16, 18-26 under 35 U.S.C. § 112, second paragraph. However, Applicant's argument with respect to these claims is rendered moot in light of the new ground of rejection.

4. Applicant's arguments filed in Paper No. 15 (6/16/03) and Paper No. 17 (7/10/03), have been fully considered and were persuasive in part. The new issues are stated below.

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim rejections-35 USC § 112, second paragraph***

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6. Claims 16, 19-26, 28-32, 38-41 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 16, 19-25 recite the limitation “which exhibits IL-2R  $\beta$ -chain binding activity and/or lymphocyte stimulatory activity”. It is unclear what this activity is because under appropriate conditions any peptide can be made to bind to another protein. Furthermore, it is expected that binding of the peptide to the IL-2R  $\beta$ -chain would result in stimulation of lymphocytes. Therefore, the metes and bounds of the claim are also unclear.

Claims 16, 19-26, recite, “that is at least 75% identical” which is improper. It is suggested that the claims be amended to recite, “that shares at least 75% identity” because either a peptide is identical or it is not but a peptide can “share at least 75% identity”.

Claim 39 recites the limitation “carrier”. It is unclear from the claim whether the carrier is a “pharmaceutically acceptable carrier” for the peptide or a carrier bound to the peptide.

Claims 28-32, 38-41 are rejected as vague and indefinite insofar as they are dependent on the above claims for their limitations.

### ***Conclusion***

No claim is allowed.

Claims 18 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Advisory Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Prema Mertz whose telephone number is (703) 308-4229. The examiner can normally be reached on Monday-Friday from 7:00AM to 3:30PM (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler, can be reached on (703) 308-6564.

Official papers filed by fax should be directed to (703) 872-9306. Faxed draft or informal communications with the examiner should be directed to (703) 746-5300.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [yvonne.eyler@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark Office on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

*Prema Mertz*  
Prema Mertz Ph.D.  
Primary Examiner  
Art Unit 1646  
September 5, 2003